STATE OF MICHIGAN

COURT OF APPEALS

GIL HENRY & ASSOCIATES, INC., Plaintiff-Appellee,	UNPUBLISHED May 24, 2005
v	No. 251849 Lenawee Circuit Court
GENERAL ALUMINUM MFG. COMPANY, Defendant-Appellant.	LC No. 03-001101-CK

Before: Bandstra, P.J., and Fitzgerald and Meter, JJ.

PER CURIAM.

Defendant appeals as of right the trial court order granting summary disposition in favor of plaintiff and entering a judgment against defendant in the amount of $14,250. This case is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

On appeal, defendant claims that the trial court erred in granting summary disposition in favor of plaintiff and in entering a judgment against it because plaintiff failed to perform according to the terms of the parties' contract. We disagree.

We review de novo a trial court's ruling on a motion for summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Review is limited to the evidence presented to the trial court at the time the motion was decided. *Peña v Ingham Co Rd Comm*, 255 Mich App 299, 313 n 4; 660 NW2d 351 (2003). When deciding a motion for summary disposition under MCR 2.116(C)(10), a court must consider the entire record in the light most favorable to the nonmoving party, including affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). Summary disposition is proper under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Id*. A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds could differ. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). Issues of contractual interpretation, including the determination whether contractual language is ambiguous, present questions of law that we review de novo. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003).

It is well settled that when a real estate broker furnishes a buyer for property who is ready, willing, and able to purchase a seller's property according to the parties' terms, the seller may not avoid payment of the commission by wrongfully refusing to complete the sale. *Advance Realty Co v Spanos*, 348 Mich 464, 468-469; 83 NW2d 342 (1957). In order for a broker to earn a commission pursuant to an exclusive listing agreement, the broker must produce an offer identical to that contemplated in the agreement. *Sterk & Vogel, Inc v Kuzee*, 334 Mich 249, 254-256; 54 NW2d 219 (1952).

"Under ordinary contract principles, if contractual language is clear, construction of the contract is a question of law for the court." *Meagher v Wayne State Univ*, 222 Mich App 700, 721; 565 NW2d 401 (1997). "If the contract is subject to two reasonable interpretations, factual development is necessary to determine the intent of the parties and summary disposition is therefore inappropriate." *Id*. at 722. "If the contract, although inartfully worded or clumsily arranged, fairly admits of but one interpretation, it is not ambiguous." *Id*.

Here, the relevant portion of the contract provides: "[I]f [plaintiff] or anyone including [defendant] are able to secure a purchaser at the price recited above, or in the alternative, on terms satisfactory to [defendant] . . . [defendant] will promptly consummate such transaction and [defendant] will pay [plaintiff] a [ten percent] commission." Defendant correctly notes that courts have strictly interpreted exclusive listing agreements, and that a broker must produce an offer identical to that contemplated in the agreement to earn a commission pursuant to the exclusive listing agreement. *Kuzee*, *supra* at 254-256. However, in this case, plaintiff did in fact produce an offer identical to that contemplated in the parties' agreement.

The parties' agreement gives two alternative methods of performance. Plaintiff secured a purchaser "at the price recited above," and thus, satisfied the first method of performance contemplated by the parties. Because the phrase "secure a purchaser at the price recited above" "fairly admits of but one interpretation," it is not ambiguous. *Meagher*, *supra*, at 722. When plaintiff secured a purchaser for $142,500, it performed under the plain meaning of the contract phrase, "at the price recited above." Even giving the benefit of reasonable doubt to defendant, we find that the record does not leave open an issue upon which reasonable minds could differ. *West*, *supra* at 183. No genuine issue of material fact exists; therefore, the trial court properly granted summary disposition in favor of plaintiff. *Id*.; *Corley*, *supra* at 278.

Defendant's argument on appeal mistakenly attempts to combine the two alternative methods of performance contemplated by the contract. Defendant's argument that plaintiff did not perform under the contract because the offer produced by plaintiff contained conditions that were not "satisfactory to [defendant]," fails because the unconditional offer terminology, "terms satisfactory to [defendant]," does not apply to the parties' first contemplated method of performance, which plaintiff satisfied. Further, the cases presented by defendant on appeal in support of its argument are distinguishable from this case. In *Kuzee*, *supra*, *Kotsan v Glasier*, 337 Mich 287; 60 NW2d 283 (1953), and *Westdale Co v Gietzen*, 29 Mich App 564; 185 NW2d 596 (1971), the brokers involved were all denied commissions because they violated express terms of their respective agreements. Here, plaintiff did not violate any express terms of the parties' agreement, but rather produced an offer identical to that contemplated in the agreement.

The trial court properly granted summary disposition in favor of plaintiff and entered a judgment against defendant.

We affirm.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter